

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

Millennium Pipeline Company, L.P.

Docket No. CP98-150-000,  
CP98-150-002,  
CP98-154-000,  
CP98-155-000, and  
CP98-156-000

Columbia Gas Transmission  
Corporation

Docket No. CP98-151-000

ORDER ADOPTING PROPOSED PROTECTIVE ORDER  
AND NON-DISCLOSURE CERTIFICATE

(Issued January 17, 2002)

This order adopts a proposed protective order and non-disclosure certificate filed by Consolidated Edison Company of New York, Inc. (Consolidated Edison) and KeySpan Corporation (KeySpan).

I. Background

On December 19, 2001, the Commission issued an Interim Order authorizing Millennium Pipeline Company, L.P. (Millennium), among other things, to construct and operate a pipeline extending from the United States-Canada border in Lake Erie through New York to an interconnect with Consolidated Edison's high-pressure line in the City of Mount Vernon, New York (Mount Vernon).<sup>1</sup> The Interim Order, however, did not certificate a specific route for the Millennium pipeline through Mount Vernon because the citizens of that City raised numerous, specific concerns about pipeline construction through their community and objected to the location of Millennium's interconnection

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<sup>1</sup>Millennium Pipeline Company, 97 FERC ¶ 61,292 (2001).

point with Consolidated Edison.<sup>2</sup> Rather, the Interim Order required that Millennium negotiate with elected officials and interested parties and citizens in Mount Vernon and recommend a route to an interconnection with Consolidated Edison's line, within 60 days of the date of the order – i.e., by February 19, 2002. The Interim Order stated that, at the end of 60 days, the Commission will issue a final order authorizing Millennium to construct its pipeline, including a specific route to the recommended interconnection between Millennium and Consolidated Edison.<sup>3</sup>

On January 10, 2002, the Commission issued an order directing Consolidated Edison and KeySpan to provide information, within five days of the date of the order, on the location, size, and capacity of Consolidated Edison's facilities, as well as information on Consolidated Edison's claim that it needs to construct additional downstream facilities and information on potential alternative interconnection points in Mount Vernon with Millennium.<sup>4</sup> The January 10 order held that a meaningful negotiation process in this proceeding that "can culminate in a route that to the greatest extent possible addresses the concerns of the Mount Vernon community" would be nearly impossible without this information. The January 10 order stated that "[i]f Consolidated Edison requests confidential treatment for any of the information that it submits, [the Commission] will require that any party, including Mount Vernon, seeking to examine the information sign a non-disclosure agreement."

## II. Discussion

On January 15, 2002, Consolidated Edison and KeySpan filed the information in response to the January 10 order. In its filing, Consolidated Edison and KeySpan claim that the information "contains trade secret material, the disclosure of which would have a significant adverse effect upon [its] competitive position and the security of its system." As part of the filing, Consolidated Edison and KeySpan request that the Commission adopt a proposed protective order and non-disclosure certificate.

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<sup>2</sup>Due to these concerns, the final environmental impact statement moved Millennium's interconnect with Consolidated Edison's existing pipeline to avoid construction near a church and a neighborhood health clinic.

<sup>3</sup>The Interim Order recognized that an alternative route through Mount Vernon could require additional consideration under the National Environmental Policy Act of 1969 and other provisions of law.

<sup>4</sup>Millennium Pipeline Company, 98 FERC ¶ 61,010 (2002).

Consolidated Edison's and KeySpan's proposed protective order is generally based on the model protective order prepared by the Commission's Office of Administrative Law Judges.<sup>5</sup> We will approve the proposed protective order and non-disclosure certificate in order to facilitate negotiations and protect the competitive positions of Consolidated Edison and KeySpan.

The Commission orders:

Consolidated Edison's and KeySpan's proposed protective order and non-disclosure certificate are adopted.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

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<sup>5</sup>See [www.ferc.gov/legal/oalj/model\\_protective\\_order](http://www.ferc.gov/legal/oalj/model_protective_order).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, L.P.

Docket No. CP98-150-000

PROTECTIVE ORDER

(Issued January 17, 2002)

1. This Protective Order shall govern the use of all Protected Materials produced by Consolidated Edison Company of New York, Inc. (“Con Edison”) on its own behalf or on behalf of KeySpan Corporation (“KeySpan”). Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Federal Energy Regulatory Commission (“Commission”).

2. Con Edison and/or KeySpan may designate as protected those materials which customarily are treated by them as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject Con Edison, KeySpan or their customers to risk of competitive disadvantage, sabotage of utility facilities, or other business injury.

3. Definitions – For purposes of this Order:

(a) The term “Participant” shall mean a Participant, as defined in 18 C.F.R. § 385.102(b), that participates in the Mount Vernon Negotiations.

(b) (1) The term “Protected Materials” means (A) materials provided by Con Edison in response to the Commission’s Order Directing Submission of Information,

Millennium Pipeline Company, L.P., 98 FERC ¶ 61,010 (2002) or otherwise in connection with the Mount Vernon Negotiations and designated by Con Edison and/or KeySpan as protected; (B) any information contained in or obtained from such designated materials; (C) any other materials which are made subject to this Protective Order by the Commission, or by any court or other body having appropriate authority or by agreement of the Participants; (D) Notes of Protected Materials; and (E) copies of Protected Materials. Con Edison shall physically mark Protected Materials on each page as “PROTECTED MATERIALS” or with words of similar import as long as the term “Protected Materials” is included in that designation to indicate that they are Protected Materials.

(2) The term “Notes of Protected Materials” means memoranda, handwritten notes, or any other form of information (including electronic form) which copies, discloses, or analyzes materials described in Paragraph 3(b)(1). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(3) Protected Materials shall not include (A) any information or document contained in the files of the Commission, or any other federal or state agency, or any federal or state court, unless the information or document has been determined to be protected by such agency or court, or (B) information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Participants who will be granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that such Participants have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on the official service list maintained by the Secretary in this proceeding.

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate, who has a need to review the Protected Material for purposes of the Mount Vernon Negotiations, and who is:

- (1) Commission Litigation Staff;
- (2) an attorney who has made an appearance in this proceeding for a Participant;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (2);
- (4) an expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for or testifying in this proceeding with respect to the Mount Vernon Negotiations;
- (5) a person designated as a Reviewing Representative by order of the Commission; or

(6) employees or other representatives of Participants appearing in this proceeding with significant responsibility for the Mount Vernon Negotiations. Provided, however, that (A) no employee of any interstate natural gas pipeline company or its affiliates other than employees of Millennium Gas Pipeline Company, L.P. and (B) no person whose scope of employment includes the marketing of energy, the transportation thereof, the development of energy projects, the provision of consulting services to any person whose duties include the marketing of energy, the transportation thereof, or the development of energy projects, or the direct supervision of any employee or employees whose duties include the marketing of energy, the transportation thereof, or the development of energy projects may be a Reviewing Representative.

(e) The term “Mount Vernon Negotiations” shall mean the negotiations directed by Ordering Paragraph B of *Millennium Pipeline Company, L.P.*, 97 FERC ¶61,292, Interim Order (December 19, 2001) and the Commission’s resolution of the issues encompassed by those negotiations.

4. Protected Materials shall be made available under the terms of this Protective Order only to Participants and only through their Reviewing Representatives as provided in Paragraphs 7, 8 and 9. However, a Reviewing Representative shall not have access to certain Protected Materials if such access, in light of the Representative’s business position, could cause Con Edison or KeySpan competitive harm or other business injury (including harm resulting from disclosure of commercially sensitive information provided to Con Edison or KeySpan by their customers or potential customers), unless otherwise

agreed by Con Edison and KeySpan unless ordered by the Commission upon challenge by a Participant. However, even if access by a Reviewing Representative to particular Protected Materials could cause such harm, Con Edison and KeySpan nevertheless shall not deny the Representative access to other Protected Materials or portions thereof requested by the reviewing Participant that upon disclosure to such Representative could not cause such harm.

5. Protected Materials shall remain available to Participants until the date that an order resolving the Mount Vernon Negotiations becomes no longer subject to judicial review. The participants shall, within fifteen days of such date, return the Protected Materials to Con Edison or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials may be retained, if they are maintained in accordance with Paragraph 6, below. Within such time period each Participant shall also submit to Con Edison and KeySpan an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials have been returned or have been destroyed or will be maintained in accordance with Paragraph 6. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

6. All Protected Materials shall be maintained by the Participant in a secure place. Access to those materials shall be limited to those Reviewing Representatives specifically authorized pursuant to Paragraphs 8 and 9. The Secretary shall place any Protected Materials filed with the Commission in a non-public file. By placing such documents in



a non-public file, the Commission is not making a determination of any claim of privilege. The Commission retains the right to make determinations regarding any claim of privilege and the discretion to release information necessary to carry out its jurisdictional responsibilities.

For documents submitted to Commission Litigation Staff ("Staff"), Staff shall follow the notification procedures of 18 C.F.R. § 388.112 before making public any Protected Materials.

7. Protected Materials shall be treated as confidential by each Participant and by the Reviewing Representative in accordance with the certificate executed pursuant to Paragraph 9. Protected Materials shall not be used except as necessary for the conduct of the Mount Vernon Negotiations, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of the Mount Vernon Negotiations and who needs to know the information in order to carry out that person's responsibilities with respect to the Mount Vernon Negotiations. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials.

8. In the event that a Participant wishes to designate as a Reviewing Representative a person not described in Paragraph 3(d) above, the Participant shall seek agreement from Con Edison and KeySpan. If an agreement is reached, that person shall be a Reviewing Representative pursuant to Paragraph 3(d) above with respect to those

materials. If no agreement is reached, the disputed designation shall be submitted to the Commission for resolution.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for Con Edison and KeySpan prior to disclosure of any Protected Material to that Reviewing Representative.

(b) Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Order.

10. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged in the Mount Vernon Negotiations, or is employed or retained for a position which would disqualify such person from continuing to serve as a Reviewing Representative under the terms of this order, access to Protected Materials by that person shall be terminated. Even if no longer engaged in this proceeding, every

person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

11. Subject to Paragraph 17, the Commission shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Commission, the parties to the dispute shall use their best efforts to resolve it. Any Participant that contests the designation of materials as protected shall personally serve, i.e. serve by hand-delivery or by e-mail, counsel for Con Edison and KeySpan with written notice specifying the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials five (5) business days after the notification is personally served unless Con Edison or KeySpan, within said five-day period, files a motion with the Commission, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on Con Edison and/or KeySpan. If the Commission finds that the materials at issue are not entitled to protection, the procedures of Paragraph 17 shall apply.

12. All copies of all documents reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs, and other documents which refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the Commission and all Reviewing

Representatives who are on the service list. For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all parties on the service list. Counsel for Con Edison or KeySpan shall provide to all Participants who request the same, a list of Reviewing Representatives who are entitled to receive such material. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

13. Nothing in this Protective Order shall be construed as precluding any Participant from objecting to the use of Protected Materials on any legal grounds.

14. Nothing in this Protective Order shall preclude any Participant from requesting the Commission or any other body having appropriate authority, to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of this proceeding.

15. Each party governed by this Protective Order has the right to seek changes in it as appropriate from the Commission. Con Edison and KeySpan have the right to request the Commission to review, in camera, documents or information identified by them as needing additional protection and to request the adoption of limitations on the disclosure, availability and use of such documents or information in addition to that accorded Protected Materials under this Protective Order. Con Edison and/or KeySpan

should clearly designate those portions of documents for which it claims the need for additional protection.

16. All Protected Materials filed with the Commission or any other judicial or administrative body, in support of, or as a part of, a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers bearing prominent markings indicating that the contents include Protected Materials subject to this Protective Order.

17. If the Commission finds at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for seven (7) business days from the date of issuance of the Commission's decision. None of the Participants waives its rights to seek additional administrative or judicial remedies after the Commission's decision respecting Protected Materials or Reviewing Representatives, or the Commission's denial of any appeal thereof. The provisions of 18 C.F.R. § 388.112 shall apply to any requests for Protected Materials in the files of the Commission under the Freedom of Information Act. (5 U.S.C. § 552).

18. Nothing in this Protective Order shall be deemed to preclude any Participant from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

19. None of the Participants waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

20. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with this

proceeding. Any violation of this Protective Order and/or any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Millennium Pipeline Company, L.P.

Docket No. CP98-150-000

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with that Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By:\_\_\_\_\_

Title:\_\_\_\_\_

Representing:\_\_\_\_\_

Date:\_\_\_\_\_